70 FR 28275, May 17, 2005

A-421-811
Investigation
PUBLIC DOCUMENT
AD/CVD Operations/7: DKK, jrl

May 10, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Purified Carboxymethylcellulose from the Netherlands

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Summary

We have analyzed the comments and rebuttal comments from interested parties in the investigation of purified carboxymethylcellulose (CMC) from the Netherlands. As a result of our analysis of information and arguments on the record, including factual information obtained since the preliminary determination, we have determined that the respondents in the above-captioned proceeding, Noviant BV (Noviant) and Akzo Nobel Surface Chemistry (ANSC), made sales to the United States at less than normal value (NV) during the period of investigation (*i.e.*, April 1, 2003, through March 31, 2004). We recommend that you approve the positions developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from interested parties:

Noviant

Comment 1: Request for Scope Modification to Exclude Certain CMC Products
Comment 2: Treatment of Noviant Pte. Ltd.'s Indirect Selling Expenses
Comment 3: Ministerial Error Allegation Relating to Noviant's Net U.S. Price Calculations

ANSC

Comment 4: ANSC's Reporting Methodology for Certain U.S. Sales

Discussion of the Issues

Noviant

Comment 1: Request for Scope Modification to Exclude Certain CMC Products

Noviant requests that, for purposes of these final results, the Department modify the scope of this investigation to exclude two cross-linked CMC products from its Nymcel line (*i.e.*, ZSB-10 and ZSB-16). Noviant notes that the scope as defined in the *Preliminary Determination* of this investigation states that "purified CMC does not include unpurified CMC or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment." *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from the Netherlands*, 69 FR 77205, 77213 (Dec. 27, 2004) (*Preliminary Determination*). *See also Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from the Netherlands*, 70 FR 5609, 5610 (Feb. 3, 2005) (*Amended Preliminary Determination*). Noviant explains that its ZSB-10 and ZSB-16 products are CMC that have been cross-linked through a chemical reaction. Based on the current scope of this investigation, Noviant states that its ZSB-10 and ZSB-16 cross-linked CMC products are subject merchandise. Because these products are used in the same application (*i.e.*, tablet disintegrates) and have the same physical properties as cross-linked CMC that is excluded from the scope of this investigation, Noviant contends that its ZSB-10 and ZSB-16 cross-linked products should also be excluded. Moreoever, Noviant argues that chemically cross-linked CMC belongs to the same class or kind of merchandise as the heat-treated cross-linked CMC excluded from this investigation.

Noviant, citing the petition, asserts that the principal use of cross-linked CMC products is as disintegrants for pharmaceutical tablets. *See* the Petition filed by Aqualon Company dated June 9, 2004, at Exhibit 13, page 6. Unlike purified CMC, which is specifically manufactured to dissolve readily in water, Noviant explains that cross-linked CMC is specifically manufactured to resist dissolution and to instead absorb water, causing the CMC molecules to swell, triggering the disintegration of tablets. *See* Petition at 3, n. 7. *See also* Noviant's first supplemental questionnaire response (SQR) at 3-4, dated October 27, 2004.

Noviant contends that the petition intended to draw a wholly logical distinction between subject merchandise (*i.e.*, purified CMC whose principal physical desired characteristic is the ability to dissolve in water) from CMC that is specifically manufactured to resist dissolution and to instead absorb water, the antithesis of dissolution. Noviant notes that it manufactures and sells a small volume of pharmaceutical grade CMC under the brand name of Nymcel, which includes cross-linked CMC with product prefixes of ZSX and ZSB. *See* Petition at Exhibit 13. *See also* Noviant Verification Exhibit 3 at 19-22. Noviant notes that its ZSX products are CMC that is cross-linked through heat treatment, which are excluded from the scope of this investigation. *See* Letter from Noviant dated January 24, 2005, at 10. Whereas its ZSB products, Noviant explains, are cross-linked via a chemical reaction, they do not fall within the narrow scope of the cross-

linked CMC exclusion. *See* Memorandum to Neal M. Halper, Director, Office of Accounting, through Theresa L. Caherty, Program Manager, "Verification Report on the Constructed Value Data Submitted by Noviant BV," dated March 17, 2005 (Cost Verification Report), at 5. As such, Noviant states that its sales of ZSB product were reported in its sales files as verified by the Department. *See* Cost Verification Report at 5. According to Noviant, the ZSB products possess the properties of cross-linked CMC, however, those properties simply were imparted via chemistry rather than heat treatment. *See* Cost Verification Report at 5. As a result, Noviant asserts that ZSB products do not perform like purified CMC, compete with cross-linked CMC (*e.g.*, ZSX products), not purified CMC, and are used in the same disintegrant applications as cross-linked CMC. Therefore, Noviant argues based on the specific exclusion of cross-linked CMC, the Department should define the scope of the investigation to exclude its ZSB-10 and ZSB-16 products.

Citing judicial precedence and the statute, Noviant contends that the Department has the authority and the duty to define the scope of the investigation. Particularly, citing *Duferco Steel Inc. v. United States*, Noviant asserts that the Department has the authority and obligation to vigorously examine the scope proposed by petitioner and determine the proper parameters of the scope based on the language in the petition, although this authority cannot be used to expand the scope beyond the relief requested in the petition. *See Duferco Steel, Inc. v. United States*, 739 F.Supp. 2d 1555, 1563 (CIT 2001).

Noviant asserts that in determining whether a particular product is covered by the scope of the investigation, the Department must determine whether that product is in the same class or kind of merchandise covered by the petition. A finding that the product is in a separate class or kind of merchandise from the class or kind of merchandise encompassed by the petition, Noviant argues, requires the exclusion of that product from the scope of the investigation. Given that its ZSB-10 and ZSB-16 products are in a different class or kind of merchandise than purified CMC, Noviant insists that these products belong to an excluded class or kind. Particularly, Noviant states that ZSB-10 and ZSB-16 are specifically modified CMC products sold for pharmaceutical use as tablet disintegrants.

Noviant asserts that ease of dissolution in water is hallmark of purified CMC, as indicated in the petition. *See* Petition at 4. Noviant states that both Noviant and petitioner recognize that water solubility is the defining characteristic of purified CMC, which explains the focus on the product characteristics of viscosity and degree of substitution, the former a measure of dissolution, the latter a property that connotes ease of dissolution. *See* Letter to All Interested Parties from Robert James, Program Manager, Office 7, Model Match Criteria, dated August 18, 2004.

Noviant explains that cross-linked CMC is the opposite of purified CMC as it is designed and produced expressly to resist dissolution, as are its cross-linked ZSB-10 and ZSB-16 products. *See* Noviant's SQR at 3-4, dated October, 27, 2004. Noviant contends that the ZSB products nevertheless serve precisely the same end use application as cross-linked CMC (*i.e.*, and therefore belong to the same, excluded, class or kind of merchandise, widely used disintegrants).

Based on the evidence, including that collected and reviewed at the verification, Noviant asserts that the Department can now determine that ZSB-10 and ZSB-16 products are of the same class or kind as the excluded ZSX products or CMC that is cross-linked through heat treatment.

In the event that the Department believes the petition is unclear in its intention to exclude the pool of products that are anti-hydrocolloids (*i.e.*, products that resist dissolution in water), Noviant contends that the Department then must make its class or kind determinations by analyzing the following criteria enunciated in the *Diversified Products* and *Kyowa Gas* cases: (1) the general physical characteristics; (2) the end use; (3) the expectations of ultimate customers; (4) channels of trade; and (5) the manner in which the product is advertised or displayed." *See Notice of Final Determination of Sales of Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the United Kingdom*, 64 FR 30688, 30706 (June 8, 1999). *See also Kyowa Gas Chem. Indus. v. United States*, 582 F. Supp. 887, 889 (CIT 1984) (*Kyowa Gas*) and *Diversified Products v. United States*, 572 F. Supp. 883, 887-88 (1983) (*Diversified Products*). Noviant asserts that the application of these factors to its ZSB products compels a determination that these chemically cross-linked CMC products belong to a different class or kind of merchandise than the merchandise covered by the scope of this investigation. For that reason, Noviant argues that its ZSB-10 and ZSB-16 products should be explicitly excluded from the scope of the investigation under the *Diversified Products* criteria.

With respect to the first criterion, Noviant contends that the ZSB-10 and ZSB-16 products lack the essential property of purified CMC; they do not dissolve in water. Rather, Noviant states that the ZSB-10 and ZSB-16 products do what cross-linked CMC does; they absorb and swell. Considering that viscosity was the most important measurable or tested physical characteristic in the Department's model matching criteria, Noviant claims that the difference in general physical characteristics between chemically cross-linked ZSB products and purified CMC is stark. *See* Noviant's SQR at 3-4, dated October 27, 2004.

Noviant asserts that the end users of these products are completely different because ZSB-10 and ZSB-16 are both used as tablet disintegrants, whereas, purified CMC is not. Specifically, Noviant notes that purified CMC dissolves rather than swells, making it incapable of performing the disintegrant function critical to the cross-linked ZSB and excluded ZSX products.

Noviant contends that pharmaceutical tableters expect their formulations to disperse essential medicines when tablets are ingested. Therefore, Noviant explains that in order to ensure that dispersion, disintegrants are included in the tablet, which when exposed to water swell and the tablet and its active ingredient are dispersed. Noviant asserts that purchasers expect and demand that purified CMC dissolve and impart viscosity. Conversely, Noviant states that purchasers do not and will not accept purified CMC that absorbs water and turns to a gel-like substance.

Noviant claims that although both purified and excluded cross-linked CMC are sold directly to end users, purified CMC is sold for food, drilling, cosmetic, and pharmaceutical coating applications, while ZSB-10 and ZSB-16, like excluded cross-linked CMC, is sold to a subset of

pharmaceutical applications (*i.e.*, tablet disintegrants).

Lastly, Noviant contends that the manner in which its products are advertised and displayed are consistent with earlier arguments distinguishing itself from other forms of CMC. Noviant states that its brochures group ZSB-10 and ZSB-16 with its ZSX products (cross-linked via heat treatment) and define them collectively as "Special High Purity Grades for Pharmaceuticals." *See* Noviant's Case Brief dated March 24, 2005 at 10 (Noviant's Case Brief).

Based on all the reasons discussed above, Noviant contends that under the *Diversified Products* and *Kyowa Gas* criteria, ZSB-10 and ZSB-16 are a different class or kind of merchandise than the purified CMC included in the scope of the instant investigation. Noviant asserts that the physical characteristics, customer expectations, and ultimate uses of ZSB-10 and ZSB-16 are dramatically different than those for purified CMC. As such, Noviant contends that those attributes coincide with the expressly excluded cross-linked CMC. If the Department finds that the petition's exclusion of cross-linked CMC does not extend also to its ZSB-10 and ZSB-16 products, then Noviant argues that an application of the *Diversified Products* and *Kyowa Gas* criteria requires that the Department exclude those products from the scope of the investigation as being of a different class or kind than purified CMC and within the class or kind of excluded CMC that is cross-linked through heat treatment (*e.g.*, its ZSX product).

In rebuttal, petitioner argues that this is the first time that Noviant has discussed the method by which Nymcel ZSB is cross-linked and as such constitutes an impermissibly late submission of factual information. More fundamentally, petitioner further asserts that the Noviant brief is the first time the scope issue has been raised. Petitioner points out that if, as Noviant asserts, there is a potential ambiguity between the clear language of the scope of the petition and the ostensible purpose of the petition, a full factual record must be developed to explore the *Diversified Products* criteria.

Petitioner explains that in the case of outstanding antidumping duty orders or a suspended investigation the Department has set forth a detailed set of procedures to be followed that allow all parties ample opportunity to comment on a proposed scope amendment. *See* 19 CFR 351.225. Petitioner argues that similar opportunities should be afforded in the context of an investigation itself so that petitioner's technical staff may be adequately consulted, and the implications of its proposed scope modification can be carefully considered, including the chemical properties and the potential uses of its product that it alleges to be outside of the scope of the investigation.

In sum, petitioner contends that Noviant's scope amendment is a factual as much as a legal argument. Petitioner states that this factual submission is impermissibly late and would require a time consuming and detailed analysis. As such, petitioner asserts that its scope modification request would be properly made in accordance with section 351.225 of the Department's regulations, if and when an antidumping duty order is imposed.

Department's Position:

Based on the information on the record, we disagree with Noviant that chemically cross-linked CMC should be excluded from the scope of these investigations.

In the Petition, the petitioner states that:

> This petition covers carboxymethylcellulose, refined and purified to a minimum assay of 90 percent, and excludes unpurified or crude CMC, as well as CMC Fluidized Polymer Suspensions and CMC that is cross-linked through heat treatment.

See Petition at 3.

The *Initiation Notice* and the *ITC Report* adopted this exact same language. *See Certain Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden; Initiation of Antidumping Duty Investigations*, 69 FR 40617, 40618 (July 6, 2004) (*Initiation Notice*) and ITC Investigation Nos. 731-TA-1073-1087 (Publication No. 45851), dated July 30, 2004 (*ITC Report*) at 5. Therefore, as agreed by Noviant and petitioner, CMC that is cross-linked by chemical reaction is included in the scope of this investigation.

During our review of the Petition, we discussed the scope with petitioner to ensure that it accurately reflected the product for which the domestic industry was seeking relief. *See* Memorandum from Deborah Scott to the File, dated June 24, 2004. Moreover, in accordance with the preamble to our regulations, the Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (*i.e.*, July 26, 2004). *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice*. Specifically, we believe that affirmatively addressing product coverage, both pre-filing and early in an investigation, is the single most effective means to address the parties' concerns. This approach results in less ambiguity over coverage and avoids problems inherent in later clarifications and modifications to an order. In addition, resolution of product coverage issues early in a proceeding reduces costs for all parties by diminishing the necessity for later changed circumstances reviews or scope inquiries. *See* 62 FR 27323 (May 19, 1997). The Department did not receive any comments from any interested party regarding product coverage until Noviant's case brief dated March 24, 2005, less than two months before the date of this final determination. Because Noviant's arguments have been raised at such a late stage in this proceeding, the Department is precluded from conducting a full analysis of comments.

There have been instances where the Department received comments from interested parties well into the latter part of a segment of a proceeding and was able to conduct a proper scope analysis. However, in those instances, the Department was able to solicit clarifying information

from the parties in order to properly analyze the scope question. *See Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004) and accompanying Scope Memoranda; *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying Final Scope Memorandum; *Final Determination of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003) and accompanying Scope Memorandum; *Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (September 14, 2001) and accompanying Issues and Decision Memorandum at Comment 10. In the instant investigation, Noviant's exclusion request was made too late for the Department to solicit comments from all parties in order to build a full factual record upon which to fully address its exclusion request.

Generally, the mechanism by which a product could be excluded from the scope of an antidumping duty order, if imposed,[1] is through a changed circumstance review, which requires the support of the domestic industry.[2] The Department may determine that a product is excluded from the scope of an order through a scope inquiry pursuant to section 351.225 of the Department's regulations. With respect to scope inquiries, the Department conducts a separate inquiry in order to fully analyze whether particular products fall within the scope of a particular order or finding, which may be initiated by interested parties or self-initiated by the Department.

Comment 2: Treatment of Noviant Pte. Ltd's (Noviant Pte.'s) Indirect Selling Expenses

Noviant requests that, for purposes of this final determination, the Department treat Noviant Pte.'s reported indirect selling expenses as either a U.S. dollar or Euro value, rather than as a per unit metric ton (MT) measure and that this ratio be applied to the gross unit price for all third country sales.

Noviant alleges that the margin program accompanying the Department's *Amended Preliminary Determination* contains a clerical error relating to the indirect selling expenses of its affiliated sales agent in Singapore, Noviant Pte. Noviant asserts that documents verified and taken as an exhibit by Department officials during verification indicate that Noviant Pte.'s indirect selling expense was calculated by dividing the company's total selling expenses in Euros by the total Euro value of sales to the markets for which Noviant Pte. has sales responsibility. *See* Noviant's Verification Exhibit 23 at 24. Noviant states that although the column under which the result of this division is captioned "Per MT," the result of dividing one Euro value by another Euro value should

[1] Upon completion of an investigation, the Department will notify the U.S. International Trade Commission (ITC) of its determination. If the Department reaches an affirmative determination and the ITC determines that these imports are materially injuring, or threatening material injury to, the U.S. industry, the Department will issue an antidumping duty order in accordance with section 351.211 of its regulations.

[2] *See* section 751(b) of the Tariff Act of 1930, as amended, section 351.222(g) of the Department regulations.

be reported as a value ratio, rather than a per unit measure.

As such, Noviant argues that because the reported indirect selling expenses for Noviant Pte. represent a ratio of expenses to sales, these expenses should be applied to Noviant's reported third country selling prices to arrive at the correct amount of indirect selling expenses to be included in the Department's calculations for constructed-export price (CEP) offset and CEP profits, rather than as a fixed amount per MT as used by the Department in its amended preliminary margin calculation.

Petitioner argues that Noviant's claim that the Department committed a clerical error by calculating Noviant Pte.'s indirect selling expenses by applying a per MT value as opposed to a U.S. dollar or Euro value is without merit. Petitioner states that Noviant specifically instructed the Department to add the per unit amount to its correction of indirect selling expenses when commenting on the preliminary results. *See* Letter from Noviant, Allegation of Significant Ministerial Errors, dated December 7, 2004 (Ministerial Error Submission). In addition, petitioner claims that Noviant had several opportunities during the instant proceeding, including verification, to bring this alleged error to the Department's attention, and should have presented its allegation earlier. In particular, petitioner argues that at no time during the Department's verification did Noviant present this issue as part of its minor corrections, nor does the Department's verification report identify it as a calculation error. Petitioner believes that the Department's inclusion of this per MT value in its third country indirect selling expense calculation does not reflect a clerical error, and Noviant should not be permitted to characterize it as such. Citing *NTN Bearing Corporation v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995), in which the Department established a six-part test, to determine what constitutes a clerical error, petitioner argues that Noviant's alleged error does not meet any of the six factors considered by the Department, and therefore, does not constitute a clerical error. *See* Petitioner's Reply Brief, dated March 29, 2005 at 5-6.

In sum, petitioner asserts that the Department correctly applied Noviant Pte.'s per unit indirect selling expenses to all third country transactions and that Noviant's inability to provide a programming solution to its alleged error is because no error exists. Therefore, for purposes of this final determination, petitioner argues that the Department should continue to use the per MT indirect selling expense value used by the Department in its *Amended Preliminary Determination*.

Department's Position:

For purposes of this final determination, we have corrected the calculation of indirect selling expenses for Noviant Pte. to reflect a ratio applicable to the gross unit prices of third country sales, denominated in either U.S. dollars or Euros.

We find that the indirect selling expense ratio calculation, which was based on total sales of purified CMC to the markets covered by Noviant Pte., was an unintentional error. In its *Preliminary Determination*, the Department determined that Noviant failed to demonstrate that commissions paid to its affiliate, Noviant Pte., were at arm's length. Thus, the Department denied an adjustment to third country prices for Noviant's reported affiliated commission expenses, and

instead included in its calculation of third country indirect selling expenses those indirect selling expenses incurred by Noviant Pte. for sales in Taiwan of purified CMC produced by Noviant. *See* Analysis of Data Submitted by Noviant BV in the Preliminary Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from the Netherlands (December 16, 2004) at 6-7.

We agree with Noviant that the Department's amended preliminary margin calculation program did not accurately reflect the calculation of Noviant's indirect selling expenses for Noviant Pte. as demonstrated by the verified record, which shows that these expenses reflect a ratio, rather than a per MT value. Upon review of the summary schedule appearing in Noviant's first supplemental questionnaire response, dated October 27, 2004, at B-15 and at Verification Exhibit 23, it is apparent that Noviant calculated Noviant Pte.'s indirect selling expense by dividing the company's total selling expenses in Euro by the total Euro value of sales to the markets for which Noviant Pte. has sales responsibility, and the result of this calculation is a value ratio, as opposed to a per MT measure. Accordingly, for purposes of this final determination, we have treated Noviant Pte.'s reported indirect selling expense value as a ratio which we have applied to all of Noviant's third country sales prices. Specifically, because Noviant Pte.'s indirect selling expense is a ratio to sales value, we have applied this ratio to U.S. dollar and Euro denominated sales.

Comment 3: Alleged Failure to Deduct Certain U.S. Movement Expenses

In its comments in lieu of a formal case brief, petitioner reiterates that the Department inadvertently erred in its preliminary calculation of Noviant's net U.S. prices. *See* Letter from Petitioner, Allegation of Ministerial Error, dated December 30, 2004. Specifically, petitioner argues that at lines 838, 850, and 846-856 of its preliminary U.S. Sales Margin Program, the Department inadvertently omitted programming language that resulted in previously defined variables being set to zero for U.S. sales denominated in Euros. As such, petitioner argues the Department failed to deduct international and domestic inland freight expenses in its calculation of Noviant's net prices for U.S. sales. In order to correct this error, petitioner proposes certain programming language. For details on petitioner's proposed programming language, *see* Petitioner's Letter, Comments in Lieu of Brief, dated March 24, 2005.

Noviant did not comment on this issue.

Department's Position:

We agree with petitioner. In reviewing the Department's preliminary and amended preliminary margin calculations, we find that we failed to deduct certain international and domestic inland freight expenses from our net U.S. price calculations. Therefore, we have revised our margin calculation program for Noviant to reflect the programming language proposed by petitioner. For calculation details, *see* the Memorandum to the File, through Abdelali Elouaradia, Program Manager, Office 7, Analysis of Data Submitted by Noviant B.V. - Final Determination, dated May 10, 2005. A public version of which is available in the Central Records Unit (CRU), Room B-099 of the main Commerce building.

ANSC

Comment 4: ANSC's Reporting Methodology for Certain U.S. Sales

In responding to the Department's antidumping duty questionnaire, ANSC stated that it was unable to provide transaction-specific data relating to the internal sale/transfer of merchandise for some sales to the United States during the POI used in its calculation of inventory carrying costs. Instead, ANSC used a weighted-average inventory period (based on average production and arrival days) in its calculation of reported inventory carrying costs (field INVCARU) on these 'unlinked U.S. sales.' ANSC notes that the Department accepted this methodology in its *Preliminary Determination*, and examined it at verification. ANSC contends that the methodology is consistent with the Department's regulations and prior court decisions, and that the Department should accept the methodology for the final determination. Even if the Department were to reject the methodology, according to ANSC, the resulting change to the calculated margin would be so small as to be an 'Insignificant Adjustment' that can be disregarded under the statute and regulations.

ANSC contends that the Department examined the methodology and the underlying reasons for the lack of actual data during verifications in both the United States and the Netherlands and did not find any information contrary to what was reported. While ANSC was able to find the sale/transfer documentation for a handful of previously unlinked sales during verification, the findings did not change the fact pattern for the remaining unlinked sales, according to ANSC. Therefore, the Department should accept the methodology used by ANSC to report variables for which it did not have transaction-specific data.

ANSC cites the Department's regulations and court decisions in support of its contention. According to ANSC, an allocation or average methodology is reasonable under section 351.401(g) of the Department's regulations when the respondent demonstrates that transaction-specific calculations are not feasible, and when the Department determines that the allocation/average methodology is not inaccurate or distortive. ANSC also cites *SNR Roulements, et al. v. United States and the Torrington Company*, 341 F. Supp. 2d 1334 (August 10, 2004); and *Slater Steels Corp., et al. v. United States and Trafileria Bedini, SRL*, 297 F. Supp. 2d 1351 (December 16, 2003), stating that both court cases allow the Department to accept averages, rather than transaction-specific data, when the actual data are not available and the methodology used to calculate averages is reasonable and not distortive. ANSC believes that both criteria have been met.

Assuming that the Department decided to reject the methodology, however, ANSC states that the application of production and arrival dates in 2002 for the remaining unlinked sales would result in an 'Insignificant Adjustment' as defined by section 777A(a)(2) of the Tariff Act of 1930, as amended (the Act). The statute defines an 'insignificant adjustment' as "any individual adjustment having an ad valorem effect of less than 0.33 percent" of the export price or constructed export price. *Id. See also* 19 CFR § 351.413. ANSC stated that adding 365 days to the reported arrival and production dates resulted in changes in the INVCARU field that changed the *ad valorem* rate by 0.12 percent. Therefore, ANSC contends that the effect would be insignificant, that the Department

should not use production and arrival dates in 2002, and that ANSC's averaging methodology is reasonable.

Petitioner did not comment on this issue.

Department's Position:

We agree with ANSC. During verification, we examined the methodology used to calculate all missing variables for unlinked sales. We also examined the variables from actual sales used to calculate the averages that ANSC reported. *See* Sales Verification of Sections A-C Questionnaire Responses Submitted by ANSC in the Antidumping Duty Investigation on Purified Carboxymethylcellulose from the Netherlands - Verification of Home Market and United States sales in the Netherlands (ANSC Home Market Verification Report), dated March 31, 2005, Verification Exhibit 1 at Attachment 9. During the verifications, we discovered that approximately 60 percent of the unlinked sales were associated with inventory transferred from Dreeland to AN-US. Most of these sales were consignment sales. The remaining sales do not appear to be linked to inventory held by Dreeland. For the remaining sales, we were unable to find definitive evidence that they arrived in the United States prior to January of 2003. Indeed, as ANSC points out, during verification ANSC was able to provide documentation with the missing variables for a handful of sales. A large majority of those sales had shipment and arrival dates after January of 2003.

Given the uncertainty regarding shipment dates, production dates, arrival dates, and movement expenses, we believe that the methodology used by ANSC to calculate average values is reasonable. Section 351.401(g)(1) of the Department's regulations states that the Secretary may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions. Section 351.401(g)(2) of the Department's regulations states that any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions. The Department is satisfied that ANSC has met these criteria. As ANSC stated, the average values were calculated using actual data from other sales of the same merchandise. ANSC calculated the average values based on sales by CONNUM, channel of distribution, and whether the sales were consignment or non-consignment. The values used to calculate the averages were verified by the Department. Therefore, the Department will continue to use the reported variable values for all unlinked sales.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final antidumping margin and the final determination of this antidumping duty investigation in the *Federal Register*.

_____ _____
Agree Disagree

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date